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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,302	12/20/2001	Alexander Goetz	ASDI-003/00US	7693

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EXAMINER

REIS, TRAVIS M

ART UNIT PAPER NUMBER

2859

DATE MAILED: 05/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,302

Applicant(s)

GOETZ ET AL.

Examiner

Travis M Reis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "515" and "215" have both been used to designate the package in Figure 4, on page 16, line 14. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 210, 771, & 792. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the reflectance chamber must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 5-7 & 37 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent

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form, or rewrite the claim(s) in independent form. According to the preamble these claims are directed to an inspection system; however, the limitations in the claims do not further limit the inspection system but are directed to the type of sample being inspected (package contents). If applicant's intent is to claim the combination of the inspection system and the package contents, then perhaps the preamble of these claims should be modified accordingly.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

6. Claims 1, 2, 8, 13-19, 28-30, 33, & 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Landa et al. (U.S. Patent 5210590).

Landa et al. disclose an inspection system for samples, the system comprising a spectrometer (150), the spectrometer having an input (164) of a field stop (140) formatted as an entrance slit (152) for receiving a near-infrared light energy (Figures 1 & 8) (col. 2 line12), adapted to verify whether the sample conforms to a predetermined standard (160(8)) based on an average of reflectance measurements or calibration wherein the calibration value is inputted back into the system (Abstract); a light energy aggregator (130) comprising a light energy input terminal housing (131) with a plurality of connectors

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(137(1-7)) adapted to receive a plurality of fiber optic cables (162(1-7)), and a light energy output terminal (135) (Figure 5); the light energy output terminal coupled to the spectrometer input (164), and sample probes (120(1-7)) comprising fiber optic cable (160 (1-7) having a distal end including a sensor (120) (Figures 1 & 3) coupled to the light energy input terminal, wherein each of the sample probes is configured to direct light energy (110) from a source to the light energy input terminal (Figure 1), wherein a processor (175) coupled to the spectrometer (Figure 13) and capable of being programmed analyzes the light energy output by the light energy aggregator (col. 10 lines 35-46).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landa et al. in view of the prior art cited in page 3 of the specification [hereinafter Prior Art].

Landa et al. disclose all of the instant claimed invention as stated above in the rejection of claims 1, 2, 8, 13-17, 28-30, 33, & 39 but do not disclose a package containing a plurality of individual items in a blister pack, with a separate probe for each item in the package.

Prior Art discloses that a NIR inspection system can be used to inspect a pharmaceutical blister package for physical aberration. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to employ the inspection system disclosed by Landa et al. to inspect a plurality of individual items in a blister pack, as taught by the Prior Art, in order to check for physical aberrations in the contents.

10. Claims 3, 4, 9-12, 20-27, 31, 32, & 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landa et al. in view of Gordon et al. (U.S. Patent 5793486).

With reference to claims 3, 4, 9-12, 20-27, 31, 32, 34-36, & 38 Landa et al. disclose all of the instant claimed invention as stated above in the rejection of claims 1, 2, 8, 13-17, 28-30, 33, & 39 including transmitting light energy values into the spectrometer input to determine whether the combined reflectance signal falls within the predetermined reflectance signal range and rejecting the sample if it does not conform (col. 10 lines 62-66).

Landa et al. do not disclose the light energy aggregator comprises a splitter block or reflective chamber wherein the plurality of input cables are combined into a single light source cable to generate an average light energy value obtained from the sample probes.

Gordon et al. disclose a dual spectrometer color sensor comprising a splitter block (40) and reflective chamber (58) for combining light into a single beam from fiber optic cables (72) (col. 7 lines 42-46) (Abstract) (Figure 1). Therefore, it would have been obvious

to one with ordinary skill in the art at the time of the invention was made to add the splitter block and reflective chamber disclosed by Gordon et al. to the light aggregator disclosed by Landa et al. in order that the entire sample set can be averaged together and processed at once, thereby saving time.

With reference to claim 37, Landa et al. & Gordon et al. disclose all of the instant claimed invention as stated above in the rejection of claims 1, 2, 8, 13-17, 28-30, 33, & 39 but do not disclose a package containing a plurality of individual items in a blister pack.

However, a NIR inspection system can be used to inspect a pharmaceutical blister package for physical aberration, as cited in the prior art. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to employ the inspection system disclosed by Landa et al. to inspect a plurality of individual items in a blister pack, since this is common in the art, in order to check for physical aberrations in the contents.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Grimmell et al. discloses a multichannel fiber optic light guide for capsule inspection (U.S. Patent 4371783). Gratton et al. discloses determining material concentrations in tissues (U.S. Patent 5492118). Haaland et al. discloses a multivariate classification of infrared spectra of cell and tissue samples (U.S. Patent 5596992). VonBargen discloses a transfectance probe having adjustable window gap adapted to measure viscous substances for spectrometric analysis (U.S. Patent 5708273). Schlager discloses a positive correlation filter systems and methods of use thereof (U.S. Patent 5750994). Mayes discloses a grain quality monitor (U.S. Patent 6100526). Smith et al. discloses a raman spectroscopy apparatus and method using external cavity laser for

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continuous chemical analysis of sample streams (U.S. Patent 6100975). DeThomas et al. discloses an instrument and method for spectroscopic analysis by reflectance and transmittance SUP 6137108). Vuong discloses a multiwell scanner and scanning method (U.S. Patent 6448089). Hoyt et al. discloses a high-efficiency multiple probe imaging system (U.S. Patent 6403947). Wenzel et al. discloses a method for quantification of stratum corneum hydration using diffuse reflectance spectroscopy (U.S. Patent 6442408).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M Reis whose telephone number is (703) 305-4771. The examiner can normally be reached on 8:00--5:00 Monday--Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-8160 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Travis M Reis
Examiner
Art Unit 2859



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

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May 1, 2003